

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
LITIGATION

No. M 07-1827 SI
MDL No. 1827

This Order Relates To:

No. C 09-5840 SI

MOTOROLA MOBILITY, INC.,

Plaintiff,

v.

AU OPTRONICS CORPORATION, *et al.*,

Defendants.

**ORDER DENYING PHILIPS
ELECTRONICS NORTH AMERICA
CORPORATION'S MOTION TO
DISMISS MOTOROLA MOBILITY'S
THIRD AMENDED COMPLAINT**

Now before the Court is a motion by Philips Electronics North America Corporation ("PENAC") to dismiss Motorola Mobility, Inc.'s Third Amended Complaint ("TAC"). Pursuant to Civil Local Rule 7-1(b), the Court finds this matter suitable for disposition without oral argument and therefore VACATES the hearing currently scheduled for November 18, 2011. Having considered the parties' papers, and for good cause appearing, the Court hereby DENIES PENAC's motion.¹

PENAC's primary argument is that Motorola's TAC lacks any substantive allegations that are specific to PENAC. Instead, the bulk of Motorola's allegations are made against "Philips," which the TAC defines as PENAC, its ultimate parent corporation, Royal Philips, "and their affiliates, parents, subsidiaries, agents and representatives." TAC at ¶49. PENAC argues that Motorola may not "impute liability to PENAC by alleging conduct by 'Philips.'" Motion at 7. Based largely on this Court's prior

¹The Court GRANTS PENAC's unopposed request for judicial notice.

1 order dismissing Nokia's claims against PENAC, PENAC argues that Motorola's TAC fails to
2 adequately allege that it acted in violation of the antitrust laws. *See* Order Granting Defendants' Joint
3 Motion to Dismiss and Granting Philips Electronics North America Corporation's Motion to Dismiss;
4 Granting Plaintiffs Leave to Amend, Master Docket No. 1824, at 10 (June 29, 2010) ("[A]llegations and
5 assertions about Royal Philips and LG Display are insufficient to state a claim against PENAC unless
6 the complaint alleges a specific connection between PENAC and the alleged conspiracy.").

7 PENAC's reliance on this Court's Nokia order is misplaced. Nokia's complaint contained
8 absolutely no allegations from which PENAC could have determined its connection to the conspiracy.
9 The sole specific factual allegation against the Philips entities alleged only that "[Royal] Philips had
10 received a Statement of Objections from EU concerning its alleged participation in a conspiracy in
11 violation of Article 81 of the EC Treaty and Article 53 of the Agreement on the European Economic
12 Area." *Id.* at 9. Other than conclusory allegations of the Philips entities' involvement, there were no
13 further allegations that any Philips entity had actually participated in the conspiracy.

14 In contrast to the Nokia complaint, Motorola's complaint contains a number of specific
15 allegations that link PENAC to the conspiracy. For example, the TAC alleges that "Philips" engaged
16 in illegal bilateral communications with Epson, Sharp, and Toshiba. *See* TAC at ¶110. It includes
17 details on those discussions, such as the dates they occurred, the identities of those involved, and the
18 subject matters discussed. Taken in the light most favorable to Motorola, these allegations adequately
19 allege that PENAC participated in the price-fixing conspiracy.


20 PENAC contends that these allegations are conspicuously made against "Philips," and no such
21 allegations are made against PENAC itself. While true, the Court believes that such matters are factual
22 in nature and better reserved for summary judgment. Indeed, PENAC's motion is accompanied by a
23 factual declaration stating that the two "Philips" employees referenced in the TAC never worked for
24 PENAC. *See* Declaration of Nancy J. Loughlin in Support of PENAC's Motion, at ¶2. Such arguments
25 are not appropriate for the pleading stage. *Cf. Ferrigno v. Philips Electronics North America Corp.*,
26 2010 WL 2219975, at *3-4 (N.D. Cal., June 1, 2010) (dismissing complaint against Royal Philips based
27 in part upon factual determination that its relationship with PENAC was insufficient to support a finding
28 of personal jurisdiction).

1 Accordingly, the Court finds that Motorola's TAC adequately states a claim against PENAC
2 under the federal antitrust laws and the Illinois Antitrust Act.² The remainder of PENAC's arguments
3 have already been addressed by this Court. Thus, the Court rejects PENAC's argument that the Foreign
4 Trade Antitrust Improvements Act bars Motorola's federal antitrust claims. *See* Order Denying
5 Defendants' Joint Motion to Dismiss the Second Amended Motorola Complaint, Master Docket
6 No. 2602, at 4-10 (March 28, 2011). The Court also rejects PENAC's motion to the extent it seeks
7 dismissal of Motorola's breach of contract and unjust enrichment claims. *See id.* at 14; Order Denying
8 Sanyo Consumer Electronics Co., Ltd.'s Motion to Dismiss Motorola Mobility, Inc.'s Third Amended
9 Complaint, Master Docket No. 4145, at 2-3 (November 15, 2011).

10 Based on the foregoing, the Court hereby DENIES PENAC's motion to dismiss Motorola's
11 complaint. Docket No. 168 in 09-5840; No. 3529 in 07-1827.

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13 **IT IS SO ORDERED.**

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15 Dated: November 16, 2011

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19 SUSAN ILLSTON
20 United States District Judge
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28 ²PENAC has withdrawn its argument that Motorola's Illinois Antitrust Claim is untimely.